

July 7, 2009

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Appeal*

Name of Petitioner: Terry M. Apodaca

Date of Filing: June 30, 2009

Case Number: TFA-0319

On June 30, 2009, Terry M. Apodaca (Appellant) filed an Appeal from a determination issued to her on June 11, 2009, by the National Nuclear Security Administration Service Center (NNSA/SC) of the Department of Energy (DOE). In that determination, NNSA/SC partially responded to a request for information the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy in 10 C.F.R. Part 1004. This Appeal, if granted, would require NNSA/SC to create a list of the pages which were responsive to the Appellant's request.

On May 19, 2009, the Appellant requested 11 items from various NNSA/SC offices. Request dated May 19, 2009, from Appellant to NNSA/SC. She agreed to pay \$25 in fees associated with processing the Request. *Id.* at 2. Relevant to this Appeal, the Appellant requested that NNSA/SC provide copies of "all documents and files in the possession of the Office of Equal Opportunity at the NNSA/SC pertaining to [the Appellant's] grievance dated December 22, 2008, and my EEO complaints from December 2006 to present." *Id.* at 1.

NNSA/SC's June 11, 2009, determination letter was a partial response to the Appellant's request. Determination Letter at 1 dated June 11, 2009, from Carolyn Becknell, NNSA/SC, to Appellant. In that determination, NNSA/SC released 100 responsive pages to the Appellant. *Id.* NNSA/SC also indicated that there were approximately 1,538 additional pages that were responsive to the request. *Id.* NNSA/SC indicated that the fee associated with release of these additional documents would total \$76.90. *Id.* NNSA/SC also stated that no list of the responsive documents exists which would allow the Appellant to narrow the scope of her request.<sup>1/</sup> *Id.*

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<sup>1/</sup>A number of e-mails were exchanged between the Appellant and NNSA/SC regarding the documents and fee associated with their release. On June 4, 2009, the Appellant requested that the

On June 30, 2009, the Appellant appealed, asking that we require NNSA/SC to prepare a list of the responsive documents so that she can narrow the scope of her search. Appeal Letter dated June 29, 2009, from Appellant, to William Schwartz, Office of Hearings and Appeals (OHA), DOE (Appeal Letter). The FOIA does not require an agency to create documents in response to a request. 5 U.S.C. § 552; 10 C.F.R. § 1004.4(d)(1), (2); *David B. McCoy*, Case No. VFA-0707 (January 16, 2002); *Barbara Schwarz*, Case No. VFA-0701 (November 5, 2001).<sup>2/</sup> NNSA/SC stated that no list exists. Accordingly, this Appeal will be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Terry M. Apodaca, Case No. TFA-0319, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review. Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: July 7, 2009

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office with possession of the documents prepare a list showing the type of document, title, and exact page count. E-mail dated June 4, 2009, from Appellant, to Christina Hamblen, NNSA/SC.

<sup>2/</sup>All OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.